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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.199 OF 2006

PETITIONER		Divyesh Elinoy Wani & others
	Vs	
RESPONDENTS		State of Chhattîsgarh & another

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4 27th

POST FOR ORDER ON ~~26th~~ AUGUST, 2007

Sd/-
DHIRENDRA MISHRA
Judge

(49)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.199 OF 2006

PETITIONERS

1. Divyesh Elinoy Wani, S/o C.E.F. Wani, aged about 33 years,
2. Vipotya Wani, W/o C.E.F. Wani, aged about 70 years.
3. Avinish Wani, W/o C.E.F. Wani, aged about 40 years.
4. Ashish Wani, W/o C.E.F. Wani, aged about 39 years.
5. Prabhat Wani, W/o C.E.F. Wani, aged about 35 years.
6. Manjula alias Manju, W/o Ashish Wani, aged about 38 years.

All resident of Ward No.3, Jail Road, Isaipara, Jamun Thana, District- Mahasamund (CG)

Vs

RESPONDENTS

1. State of Chhattisgarh, through Police Station Basantpur, Rajnandgaon, District Rajnandgaon (C.G).
2. Smt. Sneha Wani, W/o D.E. Bani, Aged about 26 years, through P. Alappya, Advocate R/o Ward 19, Thana Basantpur, Rajnandgaon, Distt. Rajnandgaon.

Present:

Mr. Maneesh Sharma, Advocate for the petitioners.

Mr. G.K. Beriwal, Dy. Advocate General for respondent No.1.

Mr. Vishnu Koshta, Advocate for respondent No.2.

O R D E R

(Passed on 27.8.2007)

Per Dhirendra Mishra, J:

1. With the consent of the parties, the matter is heard finally at the admission stage itself.

2. The petitioners by the instant petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') have

impugned the order of Annexure A-1 passed by learned Additional Sessions Judge, Rajnandgaon whereby learned Additional Sessions Judge allowing criminal revision of respondent No.2 herein set aside the order of Annexure A-2 passed by learned Chief Judicial Magistrate, Rajnandgaon and directed the trial Court not to prohibit the complainant party from participating in the criminal proceedings and permit the counsel engaged by the complainant to conduct the case as per provisions of Section 302 of Cr.P.C.

3. The short question involved for adjudication of this petition is whether the counsel engaged by the complainant may be permitted to conduct the prosecution before the Magistrate.

4. Learned counsel for the petitioners relying upon the judgment of the Hon'ble Supreme Court in the matter **Babu vs. State of Kerala**[1] submits that the Public Prosecutors are not the representatives of any parties, their job is to assist the court by placing before the court all relevant aspects of the case. The prosecutors are in fact ministers of justice whose job is to assist the State in administration of justice. They are not there to see the innocents go to the gallows and at the same time to see that the culprits do not escape conviction. Whereas, the pleader engaged by a private person, who is a de-facto complainant, cannot be expected to be so impartial and his endeavour would be to get conviction in all cases. Therefore, permission under Section 302 of the Cr.P.C. may be granted under very-very exceptional circumstances and only in such cases where the circumstances are such that denial of permission under Section 302 of the Cr.P.C. will stand in the way of meeting out the justice in the case. It was further argued that in

[1] 1984 Cr.L.J. 499

the instant case the complainant did not assign any reason/apprehension in her application for permission to conduct the prosecution under Section 302 of Cr.P.C. and in these circumstances the learned Magistrate by order of Annexure A-2 permitted the counsel engaged by the complainant to the extent of assisting the prosecution in conducting the prosecution. However, by the impugned order, the right of conducting prosecution has been given to the counsel engaged by the complainant, which is beyond the scope of revisional jurisdiction.

5. On the other hand, learned counsel for respondent No.2 Mr. Koshta relying upon the judgment in the matter of **J.K. International Vs. State Govt. of NCT of Delhi and others**[2] contended that scope of any other private person intending to participate in the conduct of prosecution is wider where the trial is before a Magistrate court, as is evident from Section 302 of the Cr.P.C. and where a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself and it is open to the Court to consider his request and where the Court is of the opinion that the cause of justice would be served better by granting such permission the Courts would generally grant such permission. However, this wider amplitude is limited to the magistrate courts and the scheme of the provisions delineated in Chaper-24 of the Cr.P.C. shows that an aggrieved private party is not altogether be eclipsed from the scenario when the criminal Court takes cognizance of the offences based on the report submitted by the police.

[2] AIR 2001 SC 1142

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6. After going through the judgments cited by learned counsel for the petitioners as also by learned counsel for respondent No.2, as detailed above, and also considering the fact that only by permitting the counsel engaged by the complainant to conduct the prosecution no prejudice is likely to be caused to the petitioners/accused persons, I am of the opinion that the present is not a fit case where the Court should interfere in the exercise of inherent jurisdiction under Section 482 of the Cr.P.C.

7. In the result, the petition of the petitioners has no merit, the same is liable to be dismissed and it is hereby dismissed at the admission stage itself.

Sd/-
DHIRENDRA MISHRA
Judge

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